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GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Paj, Inc.

Serial No. 75/438,388

Henry L. Ehrlich of Winstead Sechrest & Minick P.C. for Paj, Inc.

Daniel P. Vavonese, Trademark Examining Attorney, Law Office 103  
(Michael Szoke, Managing Attorney).

Before Cissel, Hohein and Walters, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

An application has been filed by Paj, Inc. to register  
the mark "DIAMONDLITE" for "jewelry."<sup>1</sup>

Registration has been finally refused under Section  
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the  
ground that applicant's mark, when used on or in connection with  
its goods, is deceptively misdescriptive of "jewelry" which is  
not made in whole or in substantial part of diamonds.

Registration also has been finally refused under Section 2(a) of

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<sup>1</sup> Ser. No. 75/438,388, filed on February 23, 1998, which is based on an  
alleged bona fide intention to use the mark in commerce.

the Trademark Act, 15 U.S.C. §1052(a), on the basis that applicant's mark comprises matter which is deceptive of the material content of "jewelry" which is not made in whole or in substantial part of diamonds.<sup>2</sup>

Applicant has appealed. Briefs have been filed,<sup>3</sup> but an oral hearing was not requested. We affirm the refusals to register.

Both applicant and the Examining Attorney agree as to the proper standards for determining whether a mark is deceptively misdescriptive under Section 2(e)(1) and whether it is deceptive within the meaning of Section 2(a). Specifically, as set forth in, for example, *In re Quady Winery Inc.*, 221 USPQ 1213, 1214 (TTAB 1984), a mark is deceptively misdescriptive if the following two-part test is met: (1) does the mark misdescribe the goods or services; and (2) are consumers likely to believe the misrepresentation? A mark satisfying such criteria is additionally considered to be deceptive if the misrepresentation would be a material factor in the purchasing decision. Id. Thus, as set forth in the leading case of *In re Budge Manufacturing Co. Inc.*, 857 F.2d 773, 8 USPQ2d 1259, 1260

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<sup>2</sup> Although the Examining Attorney additionally made final a "requirement for an amendment ... to specify that the goods are made in whole or in substantial part of diamonds," no further mention of such requirement has been made on appeal and, in view thereof, we consider the requirement to have been waived.

<sup>3</sup> While applicant, with its reply brief, has submitted as exhibits excerpts from two websites, such evidence, which was not previously made of record, is clearly untimely under Trademark Rule 2.142(d) and is not proper subject matter for judicial notice. Although no further consideration will accordingly be given thereto, it is nevertheless pointed out that, even if such evidence were to be considered, it would make no difference in the outcome of this appeal.

(Fed. Cir. 1988), a mark must meet the following three-prong test to be adjudged deceptive:

(1) Is the term misdescriptive of the character, quality, function, composition or use of the goods [or services]?

(2) If so, are prospective purchasers likely to believe that the misdescription actually describes the goods [or services]?

(3) If so, is the misdescription likely to affect the decision to purchase?

Provided that the United States Patent and Trademark Office puts forth sufficient evidence to establish *prima facie* that each of the above elements is met, a mark is deceptive and hence is unregistrable under Section 2(a). *Id.* at 1261.

Turning first to the refusal on the basis of deceptive misdescriptiveness, applicant argues that the misdescriptiveness of a term in a mark "may be negated by its meaning in the context of the whole mark inasmuch as the combination is seen together and makes a unitary impression." Here, while admitting that the term "DIAMOND" in its mark is misdescriptive of jewelry which is not made in whole or in substantial part of diamonds, applicant contends that its "composite mark **DIAMONDLITE** is not deceptively misdescriptive[, ] but is suggestive of jewelry that is light ('lite') of diamonds and that may include imitation diamonds."

Applicant, in this regard, maintains in particular that:<sup>4</sup>

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<sup>4</sup> Notwithstanding that applicant has neglected to make of record a copy of any of the dictionary definitions of "light" which it refers to in its main brief in support of its argument, we have considered such definitions inasmuch as it is settled that the Board may properly take judicial notice of dictionary definitions. *See, e.g.,* University of

In refusing registration, the Examining Attorney concentrated only on "diamond" and neglected to consider the composite mark of **DIAMONDLITE**. Applicant concedes that the word "diamond" alone would be misdescriptive of jewelry if the jewelry did not include actual diamonds. However, the coined, composite mark **DIAMONDLITE**, not DIAMOND, is sought to be registered. Therefore it is the impression of the mark **DIAMONDLITE** as a whole that must be considered. .... The composite mark **DIAMONDLITE** immediately suggests to consumers that the jewelry that it is associated with lacks, or is "light of[,] diamonds. It is this impression on the consumer that is paramount in determining whether the composite mark is deceptively misdescriptive ....

"Lite" is a qualitative term that has become pervasive in American culture to indicate "less," for example, lite beer or lite food. The etymology is from "light," which is defined as "containing less than the legal, standard, or usual weight," "of little importance," and "made with a lower calorie content or with less of some ingredient." *Collegiate Dictionary*, Merriam-Webster 2000. The term "LITE" has become so pervasive in society that it is denoted in dictionaries. "Lite ... having less substance or weight or fewer calories than something else: 'Lite music, shimmering on the surface and squishy soft at the core' Mother Jones." The *American Heritage Dictionary of the English Language*, Third Edition, 1996 .... "Lite ... containing less fat or sugar than similar types of food and therefore less likely to make you increase your weight." *International Dictionary of English*, ... 2000. Although these samples are now included in dictionaries, it is clear that the connotation of the word "lite" is a qualifying term representing "less" with regard to food and drink.

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Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953).

The combination of "lite" with "diamond" to form the composite mark **DIAMONDLITE** is a unique combination. It is suggestive to consumers that, consistent with public knowledge and expression, an article might be less than full diamond quality.

Applicant also asserts that, as a matter of fairness or equity, its mark "is suited for registration" because, as shown by the copies which it has made of record, there are 15 third-party registrations on the Principal Register for marks which contain the word "DIAMOND" and which list goods variously set forth as "jewelry", "jewelry ... with or without precious, semi-precious, simulated or synthetic stones," and "jewelry--namely, cubic zirconia simulated diamonds ...." According to applicant, "[t]hese examples clearly indicate" that, likewise, its mark "should be registered on the [P]rincipal [R]egister" because "**DIAMONDLITE** as a composite mark is not deceptively misdescriptive[,] but is suggestive of a source of jewelry that may exclude diamonds or may include imitation diamonds."

The Examining Attorney, on the other hand, argues that notwithstanding the third-party registrations, applicant's mark must still be regarded as deceptively misdescriptive. Citing *In re Shapely, Inc.*, 231 USPQ 72, 75 (TTAB 1986), in which the Board held the mark "SILKEASE" to be deceptively misdescriptive of women's blouses and ladies' dresses made of polyester crepe de chine rather than silk, the Examining Attorney correctly notes that prior third-party registrations are of no avail since, as stated by the Board therein: "[E]ven if the Office has--perhaps improvidently--, issued registrations of marks containing the

term 'silk' for goods not made of silk in circumstances like those presented here, we are not bound by those actions if we believe that registration in the case before us would be contrary to the statute." Moreover, citing *In re Scholastic Testing Service, Inc.*, 196 USPQ 517, 519 (TTAB 1977), the Examining Attorney correctly points out that third-party registrations are not conclusive on the issue of the propriety of registration and that, instead, each case must be decided on its own merits. Consequently, a mark which is merely descriptive or deceptively misdescriptive should not be registered simply because other such marks appear on the register. Id.

As to applicant's contention that the addition of the term "LITE" to the word "DIAMOND" is sufficient to create a mark which is not deceptively misdescriptive of jewelry not made in whole or in substantial part of diamonds, the Examining Attorney argues that the admittedly misdescriptive word "DIAMOND" still predominates in applicant's "DIAMONDLITE" mark "and is the first thing consumers will notice in making their determination about the applicant's jewelry. Similar marks, in which another term has been added to a misdescriptive term, have been held to be deceptively misdescriptive, the Examining Attorney accurately observes, citing inter alia *R. Neumann & Co. v. Bon-Ton Auto Upholstery, Inc.*, 140 USPQ 245, 247 (CCPA 1964) [mark "VYNAHYDE" for plastic film and plastic film made into furniture slip covers]; and *In re Shapely, Inc.*, supra.

With respect to the term "LITE" as assertedly meaning "less" in contemporary American culture, we judicially notice, as

requested by the Examining Attorney in his brief, that in The American Heritage Dictionary of the English Language (3rd ed. 1992), "'[l]ite' is defined as 'having less substance or weight or fewer calories than something else,' whereas 'less' is defined as 'not as great in amount or quantity.'" In view thereof, the Examining Attorney maintains that:

The above stated definition merely indicates that lite identifies an item that has less of a feature than another item. The applicant's argument regarding the meaning of lite in American culture is also restricted to identifying products with less of something, such as lite beer and lite food. .... It appears evident, however, that "lite" does not mean that a product is completely lacking in or devoid of the named feature. Therefore, the applicant's argument that consumers will view DIAMONDLITE as suggesting that its goods do not have diamonds or contain imitation diamonds is contrary to the understood meaning of the word LITE. When viewed in the context of the applicant's mark, DIAMONDLITE, consumers may assume that the applicant's jewelry has less of a certain quality of diamonds, such as less color, lower clarity, or lower weight, but will still likely believe that the goods contain real diamonds.

Based on the applicant's identification of [its goods as] "jewelry," the applicant seeks protection for all types of jewelry, including jewelry that does not contain real diamonds but instead contains fake or imitation diamonds. Since the composite mark DIAMONDLITE is likely to give the impression that the applicant's jewelry contains diamonds, the proposed mark misdescribes any goods produced by the applicant which do not include diamonds.

Referring to the excerpt of record from An Illustrated Dictionary of Jewelry (1981) at 96, which among other things defines "diamond" as "a PRECIOUS STONE that is pure native

crystallized carbon, highly valued, especially when free from FLAWS and cut into various forms with differently shaped FACETS of variable numbers and positions ... and consequently showing great BRILLIANCE and prismatic colours (see FIRE)" and which mentions that "certain ... SYNTHETIC GEMSTONES" imitate the diamond" while "PASTE and STRASS have also been made into stones as cheap substitutes for a diamond," the Examining Attorney concludes that:

Consumers are likely to believe the misrepresentation and assume that the applicant's goods contain real diamonds. .... See ... the dictionary definition from *An Illustrated Dictionary of Jewelry* 96 (1981), which describes a diamond as "highly valued" and identifies some of the imitations and deceptive substitutes for real diamonds that exist in the industry.

As stated previously, the proposed mark DIAMONDLITE may give an impression that its jewelry contains less of a certain feature of diamonds. The value of a diamond depends on size, color, flaws, and quality of cutting. *An Illustrated Dictionary of Jewelry* 96 (1981). Considering the high price for diamonds, consumers may assume that the applicant produces lower valued diamond jewelry which is not of the highest quality, but still is a real diamond nevertheless. Therefore, when the proposed mark DIAMONDLITE is used in connection with jewelry that contains imitation or fake diamonds, consumers are likely to believe that the goods do in fact contain real diamonds.

We agree with the Examining Attorney that, when used in connection with jewelry which does not consist in whole or in substantial part of diamonds, the mark "DIAMONDLITE" is deceptively misdescriptive of such goods. It is clear from the record that, in this regard, the word "diamond" *per se* is



commonly understood in connection with jewelry as designating only a real or genuine gemstone made of pure crystallized carbon rather than a synthetic or imitation product. Applicant's arguments, like those of the Examining Attorney, assume such and, in addition to definition noted above from An Illustrated Dictionary of Jewelry, the record contains an excerpt from the Jewelers' Dictionary (3rd ed. 1976) at 63 which defines "diamond" as meaning "[a] mineral composed of pure carbon, the hardest of all known substances and a valued gem, found in many colors. It crystallizes in the cubic system, has a refractive index of 2.42 and strong dispersion." Accordingly, to jewelers and consumers alike, the word "diamond" denotes the actual gemstone, rather than a fake one, so that the issue of whether applicant's mark is deceptively misdescriptive of its goods concerns what affect, if any, the addition of the term "lite" has on the significance of the word "diamond" when the designation "DIAMONDLITE" is considered as a whole.

As to the term "light" and its phonetic equivalent "lite," we judicially notice in this respect that, in addition to the definitions previously mentioned, The Random House Dictionary of the English Language (2d ed. 1987) at 1112 defines "light" as a noun meaning, inter alia, "5. the radiance or illumination from a particular source" and as an adjective signifying, among other things, "1. of little weight; not heavy .... 2. of little weight in proportion to bulk; of low specific gravity .... 3. of less than the usual or average weight .... 4. weighing less than the proper or standard amount .... 5. Of small amount, force,

intensity, etc. .... **12.** low in any substance, as sugar, starch, or tars, that is considered harmful or undesirable .... **13.** (of alcoholic beverages) **a.** not heavy or strong .... **b.** (esp. of beer and wine) having fewer calories and usually a lower alcohol content than the standard product. .... **16.** slender or delicate in form or appearance ...."<sup>5</sup>

While any number of the foregoing definitions arguably could have significance with respect to applicant's goods when the term "lite" is combined with the word "diamond" to form the mark "DIAMONDLITE," it is unlikely that consumers, as urged by applicant, would regard its jewelry as being "light ('lite') of diamonds and that [the goods] may include imitation diamonds," especially when the term "lite" or "light," which is generally applied to foods and beverages, is typically used to signify that a product contains less of a harmful or undesirable substance. Clearly, purchasers would not consider diamonds to be a harmful or undesirable property of jewelry and would not, therefore, view the mark "DIAMONDLITE" as being suggestive of articles which lack real diamonds or contain synthetic substitutes. Moreover, even if such mark might signify to consumers that applicant's jewelry is "light ('lite') of diamonds," in the sense that such goods "might be less than full diamond quality" in that the diamonds

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<sup>5</sup> To the same effect, Webster's Third New International Dictionary (1993) at 1308 lists the word "light" as a noun connoting "**1** ... **b** : the sensation aroused by stimulation of the visual pathways : BRIGHTNESS, LUMINOSITY ..." and as an adjective which variously means "**1** **a** : having little weight : not heavy ... **b** : less heavy than others of its kind ... **d** : being of small specific gravity : having relatively little weight in proportion to bulk ... 10 of a beverage **a** : having a comparatively low alcoholic content ... **17** : not heavy or massive in construction or appearance ...."

therein are of lesser value in terms of, for instance, clarity, color, cut and/or carats, the fact remains that the mark still connotes, as the Examining Attorney points out, that the jewelry sold thereunder contains genuine diamonds, even if of lesser quality. Thus, when used in connection with jewelry not made in whole or in substantial part of diamonds, the mark "DIAMONDLITE" is misdescriptive in that it denotes jewelry which, while perhaps not containing high quality diamonds, still contains genuine diamonds, even if such are of a lesser quality or value. Since consumers would be likely to believe such misrepresentation, particularly in light of the variety of available diamond substitutes for use in jewelry, the mark "DIAMONDLITE" is deceptively misdescriptive of applicant's goods which are not made entirely or in substantial part of diamonds. See, e.g., R. Neumann & Co. v. Bon-Ton Auto Upholstery, Inc., supra; and In re Shapely, Inc., supra.

With respect to the additional ground that applicant's mark is deceptive of the material content of jewelry which is not manufactured in whole or in substantial part of diamonds, both applicant and the Examining Attorney essentially reassert their positions as to whether the first two prongs of the test for deceptiveness, which also form the test for whether a mark is deceptively misdescriptive, are met. However, since the mark "DIAMONDLITE," for the reasons just discussed, has been found to be deceptively misdescriptive of applicant's goods, in this case it is the third element of the test for deceptiveness, namely,

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whether the diamond content of jewelry is a material factor inasmuch as the presence or absence thereof is likely to affect or influence the decision to purchase such goods, which is determinative of the issue of deceptiveness. Applicant contends that its mark is not deceptive because the Examining Attorney has "incorrectly based his refusal of registration upon the existence of some fraud elsewhere in the market," as mentioned in reports of various deceptive trade practices contained in the "NEXIS" excerpts made of record by the Examining Attorney, "and [upon] a misrepresentation of a Federal Trade Commission regulation," which the Examining Attorney also made of record.

In particular, as to the evidence offered with respect to the issue of materiality, applicant insists that:

The Examining Attorney bases his conclusion as to deception on NEXIS articles which indicate that there are individuals who, [among other things,] misstate the quality of diamonds, fill cracks in the gems, and pawn off imitation diamonds as natural diamond[s]. The Examining Attorney's broad jump from "diamond" to **DIAMONDLITE** shows a lack of faith in Applicant and consumers as a group. ....

The Examining Attorney takes a further leap, concluding that **DIAMONDLITE** is deceptive based on a Federal Trade Commission regulation, 16 C.F.R. §23.11, which sets out, in part:

(a) A diamond is a natural mineral consisting essentially of pure carbon crystallized in the isometric system. It is found in many colors. Its hardness is 10; its specific gravity is approximately 3.52; and it has a refractive index of 2.42.

(b) It is unfair or deceptive to use the unqualified word "diamond" to

describe or identify any object or product not meeting the requirements specified in the definition of diamond provided above, or which, though meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

(emphasis added).

Based on the FTC regulation the Examining Attorney states, [in his final refusal, that] "[t]he Federal Trade Commission has determined that it is deceptive to use the word DIAMOND on objects which do not meet the definition of a diamond." .... The Examining Attorney neglected to observe that the regulation refers only to the "**unqualified word 'diamond'.**" In the present case Applicant is not seeking registration of the unqualified word "diamond" to describe a source of jewelry. Applicant seeks the registration of the composite mark **DIAMONDLITE**, which includes the qualifying word "lite." ....

Applicant consequently urges, in essence, that the Examining Attorney's evidence is inapposite and, hence, is insufficient to establish that the presence or absence of diamond content in an item of jewelry is a material factor in the decision to buy such a product. Moreover, according to applicant, "[i]f there is any affect on the decision to purchase goods provided by [applicant under the mark] **DIAMONDLITE**[,] it will be to purchase goods which are affordable and 'light of' diamonds."

The Examining Attorney, citing *In re Intex Plastics Corp.*, 215 USPQ 1045 (TTAB 1982), for the valid proposition that "[d]eceptive marks may include marks which falsely describe the material content of a product," argues that the evidence made of record suffices to demonstrate the materiality of diamond content in a consumer's decision to purchase a piece of jewelry.

Specifically, "[r]egarding the third element [of the test for whether a mark is deceptive], the examining attorney contends that the misdescription with respect to the material content of the goods is likely to affect the decision to purchase," pointing out that "[t]he Federal Trade Commission has passed guidelines for the jewelry industry concerning the deceptive use of the word 'diamond' which have been codified in the Code of Federal Regulations at 16 C.F.R. §23.11." According to the Examining Attorney:

The applicant contends that the cited FTC regulation is inapplicable in this case because its mark is not "unqualified" but instead is qualified by the word LITE. This regulation is still instructive, since it is evident that the FTC found deception in the diamond industry to be such an important issue that it passed guidelines regarding misuse of the word "diamond." In a similar case, the Court of Customs and Patent Appeals held that the mark VYNAHYDE was deceptive ... for plastic film for furniture slip covers. *R. Neumann & Co. v. Bon-Ton Auto Upholstery, Inc.*, 140 USPQ 245 (CCPA 1964). The court referred to the guidelines of the Federal Trade Commission which condemned trademarks that include[d] the term "hide" or "hyde" for nonleather products. *Id.* at 247. It is noted that the current relevant section regarding the term "hide," 16 C.F.R. Section 24.2, uses the same preliminary language as 16 C.F.R. [Section] 23.11, namely, that it is "unfair or deceptive to use the **unqualified** term 'leather' or other unqualified terms suggestive of leather ...."

As to the remaining evidence, the Examining Attorney asserts that:

A search of the NEXIS database reveals that deception is used in the diamond industry to sell imitation diamonds as the real thing, and that consumers have believed the misrepresentation. .... See also the

dictionary definition from *An Illustrated Dictionary of Jewelry* 96 (1981), which describes a diamond as "highly valued" and identifies some of the imitations and deceptive substitutes for real diamonds that exist in the industry. Since a diamond is such a highly valued gem, consumers who mistakenly believe that the applicant's jewelry contains diamonds are likely to purchase the goods based on that misdescription.

Such materiality, the Examining Attorney maintains, is not negated by applicant's mark since, as pointed out in his brief:

[T]he proposed mark DIAMONDLITE may give an impression that its jewelry contains less of a certain feature of diamonds. The value of a diamond depends on size, color, flaws, and quality of cutting. *An Illustrated Dictionary of Jewelry* 96 (1981). Since diamonds are generally expensive due to their high intrinsic value, consumers often cannot afford to purchase the highest quality diamond. Consumers look at the different quality features, and can lower the price of their diamond purchase by selecting a lower grade in color or cut, or by choosing a diamond with more flaws. In this manner, consumers purchase a diamond they can afford even if it is not the best quality. The applicant has stated that "if there is any affect on the decision to purchase goods provided by [applicant under the mark] DIAMONDLITE[,] it will be to purchase goods which are affordable and 'light of' diamonds." .... The examining attorney has previously argued that consumers will not equate LITE with a lack of diamonds or imitation diamonds. But consumers may look at the applicant's goods as an affordable way to purchase a real diamond. Specifically, consumers may assume that the applicant produces lower valued diamond jewelry which is not of the highest quality, but still is a real diamond nevertheless. Therefore, when the proposed mark DIAMONDLITE is used in connection with jewelry that contains imitation or fake diamonds, consumers are likely to believe that the goods do in fact contain real diamonds, and are likely to

purchase the goods based on that misdescription.

In view thereof, the Examining Attorney reasons that the mark "DIAMONDLITE" is deceptive because:

Consumers are likely to view the word diamond in the applicant's mark as describing the material content of the goods. Consumers are likely to believe that the misdescription actually describes the content of the goods. Since a diamond is a valued gem, such misdescription is likely to affect the decision to purchase by consumers. In this case, the proposed mark meets all elements of the test for deceptiveness under Section 2(a) as to the material content of the goods.

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We concur with the Examining Attorney that the presence or absence of genuine diamond content in items of jewelry is a material factor in that it is likely to affect the decision to purchase such goods. To us, this proposition not only seems obvious, but in any event, the dictionary definitions of the word "diamond" are more than sufficient to demonstrate that real diamonds, even if of a lesser quality, are still gemstones and, thus, jewelry made therefrom would generally be more valuable and hence desirable than jewelry containing any of various imitation diamonds. See, e.g., In re Budge Manufacturing Co. Inc., supra at 1261 ["[e]vidence of record [which] shows that natural sheepskin and lambskin is more expensive than simulated skins and that natural and synthetic skins have different characteristics" is sufficient to establish *prima facie* case that "the misrepresentation is likely to affect the decision to purchase"].

Moreover, while we tend to agree with applicant that the "NEXIS" excerpts relied upon by the Examining Attorney



illustrate little more than that there are at least some sellers of diamond jewelry that, as undoubtedly is the case in any field or industry, are unscrupulous or otherwise are not above defrauding their customers, the Federal Trade Commission regulation cited by the Examining Attorney is additional, relevant evidence that the genuineness of diamond content of jewelry is a material factor affecting the decision to purchase such goods. As was pointed out in *R. Neumann & Co. v. Overseas Shipments, Inc.*, 140 USPQ 276, 279 (CCPA 1964), in which the mark "DURA-HYDE" was held deceptive (in addition to being found to be deceptively misdescriptive) as used in connection with plastic material of leather-like appearance made into shoes (footnote omitted):

While not controlling here, we deem it proper to take cognizance of the fact that the Federal Trade Commission, which functions under a statute prohibiting "deceptive acts or practices in Commerce," repeatedly has condemned trademarks which include the term "hide" or "hyde" for nonleather products.

Likewise, as the Examining Attorney accurately notes, the same court, in referring to the above case, "had occasion to observe that the Federal Trade Commission, in dealing with 'deceptive acts or practices in commerce,' has repeatedly condemned trademarks which include the term 'hide' or 'hyde' for nonleather products" and acknowledged that "the substance of the observations which we there made is relevant in large measure here." *R. Neumann & Co. v. Bon-Ton Auto Upholstery, Inc.*, supra.

Thus, in view of the pertinent evidence of record, we share the Examining Attorney's conclusion that the diamond

content of applicant's jewelry is a factor which would materially affect the decision of consumers to purchase applicant's goods. Plainly, the mark "DIAMONDLITE" conveys to purchasers of jewelry that such goods contain genuine diamonds, even if those diamonds are of lesser value or quality in some respects. When used in connection with jewelry which is not made in whole or in substantial part of diamonds, applicant's mark would misdescribe such goods as containing real diamonds and customers would be likely to believe the misrepresentation. Because, as demonstrated by the record, the presence or absence of diamond content in jewelry is a significant consideration in that it affects the decisions of customers to purchase such goods, the mark "DIAMONDLITE" is deceptive of the material content of applicant's goods which do not contain diamonds in whole or in substantial part. See, e.g., R. Neumann & Co. v. Bon-Ton Auto Upholstery, Inc., supra; R. Neumann & Co. v. Overseas Shipments, Inc., supra at 281; Evans Products Company v. Boise Cascade Corporation, 218 USPQ 160, 164 (TTAB 1983) [mark "CEDAR RIDGE" held deceptive for embossed hardboard siding not made in whole or in part of cedar]; and In re Intex Plastics Corp., supra at 1048.

**Decision:** The refusals under Section 2(e)(1) and Section 2(a) are affirmed.